1936.

SUPREME COURT OF THE UNITED STATES.

No. 50.

PAUL SPOFFORD & THOMAS TILESTON, CLAIMANTS OF THE STEAMSHIP JAMES ADGER, HER TACKLE, &c., APPELLANTS,

vs.

WILLIAM J. TODD, THEODORE W. TODD, WILLIAM TIEBOUT, ISAAC DAVENPORT, JAMES ALLEN AND G. B. DAVENPORT, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, John W. Nelson, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this first day of [SEAL.] November, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eighty-first.

JOHN W. NELSON, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Geo. F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this nineteenth day of May, in the year [L. S.] of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eightieth.

GEO. F. BETTS, *Clerk.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on , the day of , in the year of our Lord one thousand eight hundred and fifty-six. Present, the honorable district judge.

THE STEAMSHIP JAMES ADGER, her tackle, &c.,
Spofford & Tileston, claimants and appellants,
vs.
WILLIAM J. TODD et als., libellants and appellees.

April 13th, 1855.—The libellants file their libel in the words and figures following, to wit:

To the honorable Samuel R. Betts, Judge of the District Court for the southern district of New York.

The libel and complaint of William J. Todd, Theodore W. Todd, and William Tiebout, of the city of New York, Isaac Davenport, James Allen, and G. B. Davenport, of the city of Richmond, Virginia, against the Steamship "James Adger," her engines, boilers, machinery,

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JOHN W. NELSON, *Clerk.*

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In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this nineteenth day of May, in the year [L. S.] of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eightieth.

GEO. F. BETTS, *Clerk.*

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THE STEAMSHIP JAMES ADGER, her tackle, &c., Spofford & Tileston, claimants and appellants,
vs.
WILLIAM J. TODD et als., libellants and appellees.

April 13th, 1855.—The libellants file their libel in the words and figures following, to wit:

To the honorable Samuel R. Betts, Judge of the District Court for the southern district of New York.

The libel and complaint of William J. Todd, Theodore W. Todd, and William Tiebout, of the city of New York, Isaac Davenport, James Allen, and G. B. Davenport, of the city of Richmond, Virginia, against the Steamship "James Adger," her engines, boilers, machinery,

tackle, apparel, and other furniture, and against all persons intervening for their interest therein, in a cause of collison, civil and maritime, alleges and articulately propounds as follows:

First. That before and at the present times hereinafter mentioned, the libellants were the sole owners of the schooner "Trader," her tackle, apparel, and furniture; and that the said Steamship James Adger is now within the southern district of New York, and the ebb and flow of the tide, and the admiralty and maritime jurisdiction of this honorable court.

Second. That on the first day of April, in the year one thousand eight hundred and fifty-five, while the said schooner was proceeding on her voyage from St. Mary's river, Georgia, to New York, at about one o'clock in the morning of that day, when on the high seas, and about thirty miles to the southward of Barnegat, she was run into and sunk by the said steamship, which was then proceeding under steam on her voyage from New York to Charleston. That said collision was caused by the carelessness, negligence, and mismanagement of those navigating or in charge of the said steamship, and without any fault or negligence on the part of those in charge of the said schooner.

Third. That at the time of the said collision the said schooner was well and sufficiently officered, manned, tackled and equipped, and was sailing close-hauled to the wind at the rate of two and a half to three miles an hour, the wind being about northeast by east, and blowing a light breeze. That the schooner was heading east-southeast or thereabouts, and that she had at the time a competent look-out. That the steamboat James Adger, then bound on a voyage from New York to Charleston, and having the wind free and under full headway of steam, and going at great speed, negligently and carelessly ran into and against the larboard bow of the said schooner with great violence, cutting her through three feet or thereabouts into her deck, and carried away the jib, tearing it all to pieces, and doing otherwise great and serious damage; that the said steamship then backed off, and came across the stern of the schooner, when the vessels again came together, and stove the schooner's boat, broke her main boom, and did other serious injury.

Fourth. That the said schooner was so much injured by the collision, that she was in great peril of sinking, so much so that it became and was necessary for the preservation of the lives of the officers and crew to abandon her, and to go on board of the said steamship, which they did, and the said vessel with all her cargo and other property on board became and was a total loss.

Fifth. That at the time of the said collision, the said schooner had a large and valuable cargo on board, which she was transporting to New York aforesaid on freight; that such cargo was of the value of $ and upwards, and the freight thereon would have amounted to the sum of fourteen hundred dollars; that the said schooner was worth the sum of eleven thousand dollars and upwards, and that by reason of the premises the libellants have sustained damages to a large amount, that is to say, to the amount of twelve thousand four hundred dollars and upwards.

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Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "James Adger," her tackle, apparel, furniture and machinery; and that all persons having or claiming to have any interest therein, may be cited to appear and intervene for their said interest, and to answer this libel under oath; and that this honorable court will decree to the libellants their damages by them sustained, by reason of the premises, together with the costs of this action; and that the said steamship, her tackle, &c., may be condemned and sold to satisfy the said decree, and that otherwise right and justice may be decreed in the premises.

OWEN & VOSE, *Libllts. Proctors.*
F. B. CUTTING, *Advocate.*

Sworn to before me this 13th day of April, 1855.
GEO. F. BETTS, *U. S. Comm'r.*

Endorsed: 12,403—United States district court—William J. Todd & others vs. The Steamship James Adger, her tackle, &c.—Libel—Owen & Vose, Proctors—Filed April 13th, 1855.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America, to the Marshal of the southern district of New York, greeting:

Whereas, a libel hath been filed in the district court of the United States for the southern district of New York, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, by William J. Todd and others against the Steamship James Adger, her tackle, &c., for the reason and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

[L. S.]

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the first Tuesday of April, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for

the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

GEO. F. BETTS, *Clerk.*
OWEN & VOSE,
Proctor for Libellant.

UNITED STATES DISTRICT COURT.

WILLIAM J. TODD, THEODORE W. TODD, and others,
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c.

We consent to waive the service of the process of attachment issued in the above cause, provided the claimants execute stipulations for costs and value, the latter in the sum of fifteen thousand dollars, to be executed by Paul Spofford and Thomas Tileston, the sureties to justify before the commissioner, and the claimants filing their claim and consenting to appear and answer the libel on file, on or before the first Tuesday of May next, and failing so to do, the defaults to be entered. The stipulation for value to represent the vessel.

Dated April 13th, 1855.

OWEN & VOSE,
Proctors for Libellant.

I consent to appear for the claimants, and that the necessary orders be entered pursuant to the terms of the above consent.

April 13th, 1855.

GEO. A. HALSEY,
Proctor for Claimants.

Endorsed: 12,403—U. S. District Court—William J. Todd and others vs. The Steamship James Adger, her tackle, &c.—Owen & Vose, proctors for libellant—Consent to stipulate and waive service of process—Filed April 13th, 1855.

At a stated term of the District Court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Friday, the 13th day of April, in the year of our Lord one thousand eight hundred and fifty-five. Present, the honorable Chas. A. Ingersoll, district judge.

THE STEAMSHIP JAMES ADGER
asm.
WILLIAM J. TODD, THEODORE W. TODD, WILLIAM TIEBOUT, ISAAC DAVENPORT, JAMES ALLEN, and C. B. DAVENPORT.

And now, Paul Spofford and Thomas Tileston, intervening for the interest of themselves in the Steamboat James Adger, appear before

the honorable court and make claim to the said vessel, her tackle, apparel, and furniture, as the same are attached by the marshal under process of this court, at the instance of W. J. Todd, Theodore W. Todd, William Tiebout, Isaac Davenport, James Allen, and G. B. Davenport; and the said Spofford and Tileston aver that they were in possession of the said vessel, &c., at the time of the attachment thereof, and that the persons above named are the true and bona-fide owners of the said vessel, and that no other person is the owner thereof; and the said Spofford and Tileston of said district the true and lawful bailee thereof, as wherefore, they pray to defend accordingly.

PAUL SPOFFORD,
THOMAS TILESTON.

Sworn to and subscribed this 13th day of April, A. D, 1855, before me,

GEO. W. MORTON,
U. S. Commissioner.
GEO. A. HALSEY,
Proctor for Claimant.

District Court of the United States for the southern district of New York.

Filed 13th day of April, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas, a libel was filed in this court, on the 13th day of April, in the year of our Lord one thousand eight hundred and fifty-five, by William J. Todd and al. against the Steamship James Adger, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer may be condemned and sold to pay the demands of the libellants; and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands. And whereas, also, a claim has been filed in said cause by Paul Spofford and Thomas Tileston:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

PAUL SPOFFORD,
T. TILESTON.

Taken and acknowledged this 13th day of April, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Paul Spofford and Thomas Tileston, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

PAUL SPOFFORD,
T. TILESTON.

Sworn to this 13th day of April, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the thirteenth day of April, 1855.

G. F. B., *Clerk.*

District Court of the United States for the southern district of New York—In admiralty.

Filed the 13th day of April, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas, a libel was filed on the thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, by William J. Todd et al., libellants, against the Steamer James Adger, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas, the parties in interest have consented to waive the service of process on the claimants, executing stipulations for costs and value, the latter in the sum of $15,000; the stipulations for value to represent the vessel in lieu of her being in the custody of the marshal, under the process about to be issued, in pursuance of the prayer of said libel; and the claimants further consenting to appear and answer the libel on file, on or before the first day of May next, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree to George A. Halsey, esquire, proctor for the claimants of said steamer, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

PAUL SPOFFORD,
T. TILESTON.

Taken and acknowledged this 13th day of April, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Paul Spofford and Thomas Tileston, parties to the above stipulation, being duly sworn depose and say, and each for himself saith, that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

PAUL SPOFFORD,
T. TILESTON.

Sworn to this 13th day of april, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 13th day of April, 1855.

G. F. B.

1855, May 5th.—The claimants and respondents file their answer in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district of the southern district of New York:

The answer of Paul Spofford and Thomas Tileston, who have intervened as owners of the steamship "James Adger," her tackle, apparel, and furniture, to the libel and complaint of William J. Todd and others, libellants, as owners of the schooner "Trader," in a cause of collision, civil and maritime, pending in this court.

First. The said Spofford & Tileston deny that said libellants were the sole owners of the schooner "Trader" at the times in this behalf alleged in said complaint.

Second. They admit that at the time of the filing of the libel the "James Adger" was within the admiralty and maritime jurisdiction of this court.

Third. They deny that the collision mentioned in the libel was caused by the carelessness, negligence, or mismanagement of those navigating or in charge of the said steamship; but on the contrary aver that the same was occasioned by the carelessness, negligence, and mismanagement of those navigating or in charge of the said schooner Trader.

Fourth. They further say, that between twelve and one o'clock in the morning of the first of April, one thousand eight hundred and fifty-five, the said steamship was proceeding on her voyage from New York to Charleston; that she was then well and sufficiently officered, manned, tackled, and equipped; that she was carrying the United States mail; that, by contract with the United States Government, she is required to make the passage within sixty hours; that she was proceeding at but three-quarters speed, under steam only, and without sails; that she was proceeding slowly because of the thickness of the weather, the night being foggy, dark, and rainy; that she had three large signal-lights displayed—one at the foretopmast head, one on the top of the larboard paddle-box, and one on the top of the starboard

paddle-box, the usual position in which signal-lights are carried; the lights were white, red, and blue, and of the most conspicuous character. The mast-head light can be seen in clear weather fully twelve miles, and the others fully six to seven miles; that she had good and careful men on the look-out, both on the topgallant, forecastle, and at the wheel-house, besides the man at the wheel; that they do not know whether the said schooner was close-hauled to the wind and heading east by south, but they aver that she had none but her lower sails hoisted, had no light displayed in any part of her, and had no competent look-out; that the look-out on the steamship did not see the said schooner until it was entirely too late to avoid a collision; that the moment the schooner was discovered the men on look-out gave notice, and the engine was reversed, and when the collision occurred the wheel had made three revolutions backward.

Fifth. They further say that the damage which the said schooner sustained was not so serious but it might have been repaired, and the vessel and cargo without peril on that account to human life, and that she did not sink that night nor at any time in consequence of said collision, but was abandoned by the captain and crew within twenty miles of port without just cause, and was floating the next day.

Sixth. That they deny that the value of the said schooner, cargo, and freight was as is alleged in the said libel.

GEORGE A. HALSEY,
Proctor for Claimants.
THOMAS TILESTON.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

On this fourth day of May, one thousand eight hundred and fifty-five, before me, personally came Thomas Tileston, in the foregoing answer named, who being by me duly sworn, doth depose and say, that he has read the said answer by him subscribed, and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters that he believes it to be true.

CHAS. ELIOT SCOVILLE,
U. S. Commissioner.

Endorsed: 12,403—United States district court for the southern district of New York—The steamship James Adger, asm.—William J. Todd & others—Answer—George A. Halsey, proctor—Filed May 5th, 1855.

1855, May 8th.—The libellants file the replication in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The replication of William J. Todd, William Tiebout, Isaac Davenport, James Allen, and G. B. Davenport, libellants, to the answer of

Paul Spofford and Thomas Tileston, claimants of the steamship "James Adger," respondents, alleges that they, the said libellants, will aver, maintain, and prove their libel to be true, certain, and sufficient; and that the said answer of the said claimants is uncertain, untrue, and insufficient. And they humbly pray as in and by their said libel they have already prayed.

OWEN & VOSE,
Libellants' Proctors.

Endorsed: 12,403—United States District Court—William J. Todd & al. vs. Steamship James Adger—Replication—Owen & Vose, libellants' proctor—Filed May 8th, 1855.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-five. Present, the honorable Samuel R. Betts, district judge.

THE STEAMSHIP JAMES ADGER, &c., SPOFFORD & TILSTON, claimants & appellants,
vs.
WILLIAM J. TODD & al., libellants & appellees.
} 12,403.

OCTOBER 24TH, 1855.

This cause having been called in its order on the calendar, ordered hearing.

Evidence for the libellants:

Depositions of Eugene Rohan read.
" " Peter F. Terry "
" " John Pensard "

Evidence for claimants:

Deposition of Ronalds Taylor read.
" " Walter Scott "
" " Isaac Halstead "
" " William Merritt "
" " Nathaniel S. Bradd "
" " Thomas Donelly "

U. S. DISTRICT COURT.

WILLIAM J. TODD and others
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Eugene Roehn being produced and examined as a witness on the part of the libellants, deposes and says: I was on board of the schooner

Trader at the time of the collision with the James Adger; I was chief mate, and had command of the deck at the time; my watch commenced at 12 o'clock; I had two men in my watch besides myself; one of these was stationed at the wheel and the other on the look-out; the collision occurred about one o'clock at night; the night was a little rainy, a little misty. The schooner was heading about east-southeast. The wind was about nartheast by east, and blowing about a two-knot breeze. We had our four lower sails, and going not over two knots, close-hauled. The man at the wheel first saw the steamer; he reported her to me; I was then standing on the quarter-deck; I saw her; she then bore, as near as I could tell, right on our larboard beam, a little on the weather bow if anything; she appeared to be about three-quarters of a mile off. As quick as she was reported I went down into the cabin and got the globe lantern; I found it on the cabin table; it was lighted and standing there; it was lighted when I came on deck at the beginning of my watch at twelve o'clock; I took the globe light on deck and went forward and held it up at arms' length, standing myself at the time on the weather larboard side on the forward rail. The steamer was from one-half a mile to three-quarters of a mile off when I held up the light, and bearing apparently the same from us as before. There was nothing at all to obstruct the view of the light from the steamer; it was bright and good light; the lantern was in good order. I stood there and held the light until the steamer got almost on top of us; then, when I found there was no help for the collision, I ordered the helm put hard up, that is hard to port, and to let go the main sheet; this order was obeyed right away. The schooner had not fallen off but very little, not over a point, before the collision. We had poor steerage-way on the vessel at the time. The wind was very light. My object of ordering the helm put hard to port was to lessen the blow as much as possible.

The steamer struck us on the schooner's larboard bow just forward of the forerigging. The blow was a glancing blow forward, with the starboard side of the steamer towards us. I should, that the steamer's stern went into our deck from two and a half feet to three feet, carrying away everything from the water's edge; carried away our flying jib, main jib, and headstays; also, our anchor off the bow. The steamer then backed off and went about one half a mile, and then came up under our stern, for the purpose, as we supposed, of speaking to us, and then the vessels came together again, and at this time the schooner had her main boom broken, her mainsail torn very badly, and her boat smashed all to pieces. The steamer then backed off about two lengths, as near as I can tell, and asked us if we wanted a boat; our answer was Yes! Before that, at the first collision, I hailed the steamer and asked who she was; I asked three times and got no answer. The steamer sent a boat to us and took us off. After the first collision, I and the captain went into the forepeak, (we had no forecastle, as that was in a house on deck,) to see what damage has been sustained; we found the water coming in about the size of a barrel,

every time she rolled on her larboard side. The captain went down twice to satisfy himself; when I was down I could see daylight right through that part where the wound was; we concluded, after the first collision, to stay by her, but after the injury by the second collision, our boat being stove, and having no sails but one to depend on, we concluded to leave her. The captain and I, and all hands, concluded it was best to leave her, and it was then that we asked the steamer to send a boat; I should think it was about half an hour after the collision before we were taken off; I don't know how much water she then had in her, but judged that she was then about fourteen or fifteen inches by the head; no person from the steamer came aboard of the schooner; there was no offer to take us in tow, or to lie by us, until after we had got on board the steamer, when something about taking us in tow—but what it was, I don't recollect—was said by the captain of the steamer; this was just as the steamer had got under way; the steamer did not stop to take her in tow; in my judgment it would not have been safe for us to have remained on board of the schooner, injured as she was. Before the collision, I did not hear any hail from the steamer; the last I observed of her wheels, they were going forward; at the time of the collision the wheels were stopped; I could see a vessel sails at the time of the collision one half a mile; I feel perfectly satisfied of this; our light could have been seen at that time three quarters of a mile good, or a mile; our light gave as good a light, in my opinion, as the steamer's.

At about the same time the man at the wheel told me of the look-out, the look-out also reported it within half a minute; it did not take me over a quarter of a minute to get the globe light; I only had about two steps to go down and two to return; I did not stop to light the lantern; it was already lighted and ready to take out, so that I only had to take it in hand and step out with it; I heard the witness, Badeaux, testify in regard to my stopping to light the lamp; he is mistaken about this; it was lighted; he had not been out of the cabin until the steamer was almost on top of us; he did not follow me out when I brought up the light; he was then trying to make a fire in the cabin, and had not made it yet. The schooner is from ninety to ninety-five feet long. If the steamer had held her course, I don't think she would have struck us at all, but if she had it would have been near to our stern; if the steamer had ported her helm, when she put her helm to starboard, she would have cleared the schooner; she would have gone under her stern; I have no doubt about this.

Being cross-examined, the witness says, I am at present chief mate of the Lovett Peacock; the captain of her is Captain Terry, the master of the Trader at the time of the collision; I don't know who the owners are; one of them is named Major, and one Gilmore, that is all I know; the proper position of the captain of the watch, at night, is on the quarter-deck; when the man at the wheel gave the alarm, I was on the weather quarter-deck; I suppose I had been there from half a quarter to three quarters of an hour, for I had not looked at the time, and without

having been in the cabin; I had not been in the cabin during my watch; I stood right alongside the house, the cabin; when I went down for the light, I said nothing to him, nor he to me; I hailed the steamer when she was right into us; I had not seen the captain then, but he may have been on deck, for all I know. From the first collision until we went aboard the steamer, was about half an hour; I have been employed on board the Peacock ever since I came home in the Adger, except for a week or two when I took a resting spell.

EUGENE ROEHN.

Sworn to before me, May 29th, 1855.

GEO. HARGAN,
Commissioner of Deeds.

U. S. DISTRICT COURT.

WILLIAM J. TODD et al.
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Jetur F. Terry, a witness produced and examined de bene esse on the part of the libellants, being sworn says: I was master of the Trader at the time of her collision with the James Adger; we had a cargo of naval stores, consisting of rosin and forty-four raw hides, and two barrels of beeswax. The freight upon the cargo would be about thirteen hundred dollars, somewhere near that. We had vessel's stores aboard, also some wood, which had been bought on the vessel's account; I can't tell exactly what the stores and wood were worth, but suppose them to be worth not less than one hundred and twenty-five dollars. There were other things lost; the compasses and clock; the clock was worth about five dollars; the compasses were good copper compasses, about one and a half years old. The vessel was about two years old; she was in firstrate condition; her rigging was good, her sails were new, and had only been one voyage before. She was built in the Chesapeake bay; she was two hundred and one tons Government measurement, but carried three hundred tons. She was a fore-and-aft schooner, without centreboard, keel vessel. When I sailed I had a mate, steward, and four men before the mast, exclusive of Badeau; seven is our complement, all told, but with Badeau I had eight. At the time of the collision I was below; my watch ended at twelve o'clock; at that time I went below and went to bed. Before I went to bed I lighted the globe lanthorn, and set it on the cabin table; I saw that it was well trimmed and gave a good light; I did not go to sleep. I should judge I had been to bed half an hour when Mr. Roehn came down and took the lanthorn and went directly on deck; Badeau was at that time at work around the stove, trying to make a fire in the stove, which was within six feet of me. Badeau then went up and looked out of the companion-way, and came right down again

and went to work at his fire again; I said to him "What is out?" He answered, "There is a light ahead, and I believe it is a steamer." I lay in my berth about five minutes, and then I said to him I believe I will take a look-out. I got up, put on my pants, and set down close by him, putting on my boots; I was not in any hurry, as I did not hear any noise from the deck, and did not suppose there was anything of any importance. I had got one on, and the other partly on, when I heard the mate say, Put your wheel aport, and let the main-sheet run out. The instant I heard that order I jumped to go on deck, and Badeau went right ahead of me. Before either of us had got out of the companion-way the vessels came together. After the first collision the steamer backed off and came around under our stern. The damages sustained by these collisions are correctly stated by the mate, Roehn. I went below with the mate, down into the forepeak, with a light, to ascertain the damage; I found the schooner all broken in where the blow was; her frame was all broken in, knees, timbers, and every thing. The wound was large; I should think she was cut three feet from the plank shives right through into the deck, and clear down to the water's edge; the water came in fast; I made this examination before the second collision. I made a second examination before the last collision; I then thought that she would go down in about twenty minutes; I could not see the water in her bottom, as the cargo filled it up, but the water was pouring in and running down her ceiling in among the barrels; it was pouring in fast; I did not hail the steamer, but told Mr. Roehn to hail her and ask her name; he did so. The steamer came up again, as we supposed, to speak us, and shot across our stern and broke our mainboom, stove our boat, and tore our mainsail; she then shot by us and stopped, and asked if we wanted to be taken off; we told him we did, and thereupon they sent a boat to us and took us all off; I did not hear any person offer to go back and examine our vessel. After we got aboard the captain asked me if I thought she would sink; I told him I thought she would. He asked me how long first; I told him I thought she would be full of water in fifteen or twenty minutes. He then turned to some man on deck, whom I supposed was one of his officers, and had some conversation with him, and then said, Well I suppose we might as well go along. The steamer then got under way and proceeded. In my judgment it would not have been safe or prudent to have remained in her. When we left her I could see her, and should think she had settled then all of three feet by the head. It was the deliberate judgment of all that we must leave her, and not attempt to remain on board. I have never seen her since.

When I first came on deck I think a vessel's sail could have been seen half a mile off; it was not thicker when I came on deck, at the time of the collision, than when I left it at 12 o'clock, and I had seen vessels during my watch as far off as that. I think our light ought to have been seen one mile plain without showing any dim; one mile plain; I mean it could have been seen that distance. After I came on deck I saw a

steamer passing down to the southward, and could see her light plain, and think she was a mile off.

Being cross-examined, the witness says: I have charge at present of a vessel, the schooner Lovett Peacock; is captain; she is intended for the coasting business; she will sail in a few days for Wilmington; James R. Gilmore and company are the principal owners; there are several small owners; I don't know that any of them were owners of the Trader; I joined this vessel the second day of May; I think I got here on the first or ninth April; in the interval I was in nobody's employ, nobody paid me for my time; I had no interest in the Trader, nor in her cargo nor freight.

JETUR F. TERRY.

Sworn to before me, May 29th, 1855.

GEO. HARGAN,
Comm'r of Deeds.

Endorsed: 12,403—U. S. District Court—William J. Todd & als. vs. The Steamship James Adger—Depositions of J. F. Terry and E. Roehn, captain and mate of Trader—Owen & Vose, proctors—Due service of a copy of within depositions admitted—May 30th, 1855—Geo. A. Halsey.

UNITED STATES DISTRICT COURT.

WILLIAM J. TODD and others
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Pensard being sworn says, he is a seafaring man. I have followed the sea for about fourteen years last past; I don't know that I shall go to sea this summer. I was on board the schooner Trader at the time of the collision with the James Adger; I was on deck at the time; I was look-out; I was stationed on the look-out; I went on the look-out at twelve o'clock; our watch came on deck then; I was in the mate's watch; I stood upon the forehatch when I saw the light of the steamer; this was the place for the look-out; I could see all around from this place; it rained a little, some foggy, not much; the schooner was going about two and a half or three miles an hour; the wind was light; it was about northeast by east; the schooner was heading east-southeast; I saw the steamer's light; I reported them; I said "Light ho!" the mate answered and said, "I see;" he had a globe light in his hand at that time. The man at the wheel saw the light first; when I saw the steamer's light they were on our larboard beam; I saw at first three lights, a green, red, and white light; when I first saw the steamer, I can't tell exactly, but I suppose she was half a mile off; the mate then had the lanthorn in his hand; it was lighted; he went forward with it and took it in his hand and stood up on the forward rail, on the larboard side, and held it up; he did not stand there long, about

four or five minutes; he stood there until the steamer was nearly on top of the schooner, when he got down; when I saw the steamer coming I jumped into the forecastle to save some clothes. I tried to do it but did not; as I came out the steamer struck us; she struck us on the larboard bilge forward of the forerigging; she did not come exactly head on, but a little glancing forward; she remained afoul of us about two minutes, when she backed off; I should suppose she backed away three quarters of a mile or a mile off; she came around our stern and the vessels came together again and broke the main boom and tore the mainsail, and at the same time stove our boat; she went on ahead about one length of the steamer and then stopped; the captain of the steamer hailed the schooner, and asked how much damage was done; the mate said the schooner sunk very fast; the captain and mate had been down in the forecastle to see what damage was done before this; they sent their boat to us and took us off; after we got on board the steamer I could see the schooner; saw her all the time until the steamer got under way; the schooner had her lower sails set at the time of collision; we were going full and *by*; I heard the mate under the wheel hard up and to let go the main sheet; this was after he had got the globe light; I was forward and could not see whether the main sheet was let go or not; the schooner kept off a little after this before the collision, I can't tell how much. Just as the steamer struck us I could not see all three of the lights; I could not see the red light; I did not see any change of course in the steamer; she kept straight on; could see a vessel at that time without a light about a mile.

Cross-examined.—I did not hear O'Neil tell the mate of the light; this was a little after one o'clock; I had seen the mate every little while I was on the look-out. When I saw the light of the steamer I turned and saw the mate with a lanthorn. I was in the forecastle when I jumped down to try and get my clothes; but half a minute more, may be one minute, and as I came out the forecastle, the steamer struck. The wheels of the steamer stopped as she struck the schooner. From the time I first saw the light until the collision was five or six minutes. I tried the pumps of the Trader before I left her; she had not made any water; I saw by the sail of the Trader she fell off. Whether the steamer altered her course or not I don't know. I looked at the foresail and jib of the Trader, and I could tell by them that the Trader fell off, but I don't know how much. I am twenty-four years old; I have sailed in American vessels about seven months, the rest of my time in French vessels.

his
JOHN ⋈ PENSARD.
mark.

Sworn before me this 14th April, 1855.

GEO. HARGAN,
Commissioner of Deeds.

Being further examined on the part of the libellants the witness says: From the time I took my station as look-out until I saw the steamer's

lights, I had not been in the forecastle or left my station; I did not go into the forecastle until after I saw the mate with globe light in his hands; I did not see Badeau on deck until after that.

Being further cross-examined he says: When I first saw the light the mate had come on deck with the lantern in his hand.

his
JOHN ⋈ PENSARD.
mark.

Oath to this part waived by parties.

GEO. A. HALSEY,
For Owners.
OWEN & VOSE,
Libellant's Proctors.

Endorsed: U. S. District Court in admiralty—William J. Todd & al. vs. The Steamship James Adger, &c.—Deposition of John Pensard for libellants—Owen & Vose, libellant's proctors—Due and timely service of a copy of within deposition admitted—April 20th, 1855—Geo. A. Halsey, p'r lib't.

U. S. DISTRICT COURT.

THE STEAMSHIP JAMES ADGER, her tackle, &c., asm.
WILLIAM J. TODD & al.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Ronalds Taylor being called on the part of defendants, and sworn, says: I was on the James Adger on her voyage from New York to Charleston when she had a collision with the schooner Trader; I was on the forecastle deck at the time, and had been there about an hour; I was on the look-out; the night was very thick. The steamer had three lights, one at the foremast head and one at each wheel-house. I believe I first saw the Trader from the steamer; I immediately gave the alarm; I then heard our engine bell; the steamer was then slowed. From the time I first saw the Trader until the collision I should think was about ten minutes; I first saw the sails of the Trader; when I first saw I could not see any lights; when I saw the Trader she was standing across our bow. The steamer struck the Trader forward of the forechains; after we first struck the steamer backed off; before we struck the engine was backing; how many revolutions she had made I cannot say; after the steamer backed off at first we came together again; I was then busy and do not know how that occurred. We afterwards took off the crew, and left the Trader afloat, and I don't know but she is afloat yet; it was the first mate's watch at the time. William Merritt was with me on the look-out. Mr. Halsey I saw in the wheel-house. I do not think the collision could have been avoided in the time that elapsed between my giving the alarm and the collision;

there was not time enough to avoid it. The weather was very thick; it drizzled; the sea was smooth; I don't know how the wind was; we were going with the wind, I think; I was in a good position for a look-out; I had kept a good look-out all the time.

RONALDS TAYLOR.

Sworn to before me this 26th day of April, 1856.

ELIAS L. SMITH,
Comm'r of Deeds.

Cross-examined.—I was in the first mate's watch; there were four in his watch; one was called Bill, another Charlie, Robert, and myself; I don't know the other names of these witnesses; Charlie was at the wheel; I and "old Bill" were on the look-out; I was on the forecastle forward, on no particular side; Bill was on there too; he was walking around on the forecastle; I could not tell exactly when; the mate was in the wheel-house; I don't know where Robert was; our watch came on at 12 o'clock; the wheel-house is where the pilot stands to steer the boat; this steamer is steered in the same way as the river boats; the night was thick, and kind of rainy; I can't tell how far the Trader was off when I first saw her; I saw her first, she was standing across our bows; we were heading right towards her; I sung out "Sail ahead a little on our starboard bow." The mate answered, Aye aye! He was then in the wheel-house; I next heard the bell to stop the engine; as soon as I holloed, he answered me and struck the bell; I don't know how far the Trader was off when I first saw her; can't estimate her distance at all; I first saw her sails; she was close to when the bell rang; that is, not a great way off; I did not see the light of the schooner until we got close in; I did not see it before I heard the bell ring to stop; I did not see it until we were close together; I heard no other order given on board our vessel, except the bell; I did not hear any order given to the man at the wheel; I don't know that anything else was done on our vessel to avoid the collision, but to stop and back; that was all that I saw; we tried to clear her; I can't tell whether our vessel changed her course after I reported the light. As soon as I saw that the vessels could not avoid one another, I got off the forecastle deck; I jumped down on the main deck, and by the time I did that, they were into each other; there was no other person on deck at the time, that I know of, besides the regular watch; I don't know which way the other look-out went; I was looking out for myself; I did not go in the boat to bring the men off; I don't know who went; I went forward to see what injury had been done to the steamship; I can't tell which way the wind was exactly; I knew it was aft, we had no sails set; I can't tell how fast we were going; I don't know how fast we had been going; I don't know where we were; I did not see any other vessels before this. This was the first I saw; I have followed

the sea five years off and on; I don't know whether Bill was old or not; we called him old; I expect he could see.

RONALDS TAYLOR.

Further oath waived.

OWEN & VOSE,
GEO. A. HALSEY.

Endorsed:—U. S. District Court of the southern district of New York—The Steamship James Adger ads. William J. Todd and others—Testimony of Ronalds Taylor—George A. Halsey, claimant's proctor.

U. S. DISTRICT COURT.

THE STEAMSHIP JAMES ADGER, her tackle, &c., ads. WILLIAM J. TODD and others.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Isaac Halstead being duly sworn, on the part of the defendants, does depose and say: I am the first mate of the James Adger, and was so at the time of the contact with the Schooner Trader; I was in the pilot-house at the time, that is the wheel-house; it was my watch at the time; the first I knew of the matter was, the two look-outs sung out there was a sail ahead, about a point on the starboard bow; a vessel in that position could see all of the steamer's three lights; I ordered the wheel hove hard a-starboard immediately on hearing the look-out; it was done at once; at the same time I told the man to heave the wheel to starboard; I rang the engine bell to stop her; this was as soon as I possibly could; between that and the contact was not more than a minute, or a minute and a half; from the wheel-house there is a good look-out; we can see all ahead and abeam; the weather, at the time, was thick, and a drizzly rain; there was with me, at the wheel-house, a man at the wheel; I saw nothing of the schooner until after the look-out had called out and we were nearly together; I saw no light on the schooner when I first saw her; the engine was reversed immediately on my ringing the bell; we were going at from nine to ten knots an hour; not exceeding ten minutes in the time between the call by the look-out and the collision; from the position and bearing of the vessels I do not think a collision could have been avoided; after we struck the steamer backed off, she was under stern way; the last I saw of the Trader she was as upright as she was before run into; I don't know anything to the contrary but she is afloat yet; my watch, in all, including myself, amounted to five men; this was exclusive of the engineer's watch; at the time of the collision and previous thereto, there were two of my watch on the forecastle; the look-out, one in the wheel-house with me at the wheel, and one down on the main deck; the steamer had three lights displayed; one white light at the foremast head, one red light on the port wheel-house, and one green light on the starboard wheel-house; that night, a single light in motion on a

vessel approaching, would furnish no indication of bearing or direction of the vessel.

Cross-examined.—My place on deck is alongside or in the wheel-house; the first report by the look-out was a sail ahead, about a point on our starboard bow; I did not see it before I gave the order to starboard the helm, nor before I rung the bells to slow, stop and back; after I rung the bells I remained in the wheel-house; I did not see the sail until just as the vessels came together; the look-out gave no other report besides the first; we had got our wheel hard a-starboard before I saw the sail; it was about the time that we got the wheel hard a-starboard that I saw the sail; she was then just about a point on our starboard bow close by; could see her sail; could see something white; could not discern what it was; I did not see any light at the time, nor until just as we were about lapping in to each other; I could not tell which way the sail was heading when she was reported, the look-out did not report how she was heading; putting our wheel hard a-starboard was intended to pass her on our starboard hand; after the wheel had been put to starboard, we were so close together that she could not have swung a great ways before the collision; the engine being stopped, not over one point going as we were before the bells were rung; I think the steamer could be changed from her course, enough to avoid an object the size of the Trader, in going about four lengths; if I had known she was coming head on or the exact position in which she lay, I should have put the helm hard a-port, that would have carried us under her stern; I don't think I could see a sail at that time twice the length of our ship ahead; she is about two hundred and thirty feet; I have stated all that was done on board of our vessel to avoid the collision; there was no one deck except those in my watch; the second mate went in the boat to the Trader and brought off the crew; it was two o'clock before we again got under way; I did not offer to have the steamer lie by the wreck during the night; I did not hear the captain make any such offer; I did not hear any remarks of the kind; we did not send any one to see what damages the Trader had sustained; we did not offer to take her in tow; the crew of the Trader judged for themselves as to the propriety of abandon; we did not judge for them; I saw the Trader upright after we got under way; I saw her hull and masts; we were then about a quarter of a mile off; the collision occurred somewhere off the capes of Delaware, about fourteen miles from Cape May; we had not seen any other vessels during my watch; the bell-pulls are in the wheel-house where I was standing.

Direct resumed.—The crew of the Trader wanted us to lie by a little while to see how she would act, if they could get her into land; this was just before we had taken them off; they spoke to the captain; I don't know as to any one particularly; don't know what reply was made, I was forward; this was after we came up the second time; they requested us to send our boat and take them off, and the boat was sent; when we left the Trader, her light was standing on the top of the cabin; the Trader was about a quarter of a mile off when I saw her last; it

had then cleared up some; the steamer carries the United States mail; we laid by the wreck about an hour from the time of the collision.

ISAAC HALSTEAD.

Sworn to before me, this 9th day of May, 1855.

ELIAS L. SMITH,
Commiss'r of Deeds.

Endorsed: U. S. District Court for the southern district of New York—The Steamship James Adger adsm. William J. Todd et als.—Testimony of Isaac Halstead—George A. Halsey, claimants' proctor—Due service of a copy of the within deposition hereby admitted—May 25th, 1855—Owen and Vose, libellants' proctors.

U. S. District Court,
Southern district of New York, ss:

The Steamship James Adger, her tackle, &c., ads.
William J. Todd et als.

Walter Scott being duly sworn, on the part of the defendants, says: I am chief engineer of the Steamship James Adger; I expect to leave this city for Charleston on Saturday next; I have been the chief engineer of the James Adger nearly two years; I was on board the Adger at the time the Schooner Trader came in collision with her on the morning of Sunday the first of April last; it took place about one o'clock in the morning; I was in the engine-room at the time alongside the engine; the first I knew of anything was the ringing of the engine bell to stop her and then to back her; four bells were struck as quickly as could be; the first bell to shut off steam; the second to stop the engine, and the two to back her; we obeyed the bells instantaneously, as quick as it could be done with regard to the safety of the ship, and we had made three and a half turns of the wheels back when I felt a slight jar in the engine-room; I went up to the door then and ascertained we had come in contact with a large schooner; I then went below, I remained there until the boat went off to the schooner and got the crew on board; I should think it could not be more than a minute from the time the first bell was struck until the contact took place; at that time it was very thick and rainy; I should judge we were then going about nine and a half knots an hour, by the number of times the wheels turned that hour; that was less than her usual speed, our general full speed is twelve and a half to thirteen knots an hour; we went a little slower on account of the weather; the steamer had her signal lights up; I had seen them some half hour previous to this accident, a green light on the starboard wheel-house, red on the port, and a bright light at the foremast head; such a night as that I should think these lights could not be seen more than a quarter to a half mile; of a clear night I should think one could see the masthead light some eight to ten miles off; the Steamer Adger is between eleven and twelve hundred tons.

Cross-examined.—I stand watch. It was not my watch at the time of the collision; my watch came on at one o'clock; I had not taken charge of the engine at the time; it was in charge of my first assistant, Joseph Pollock. There was one other engineer in his watch besides the fireman and coal-passers. The first assistant, with his watch, were on duty at the time; the bells struck as quick as they could, one after the other.

When going under full speed the wheel makes sixteen and a half to seventeen turns in a minute; and from the number of turns which she had made I ascertained the number of revolutions, from twelve to one o'clock, by the entry of the assistant on the log-slate. The James Adger was commanded on that passage by Samuel De Forrest. He was not the regular captain, but was appointed to the command for that passage. I should judge, when under full sternway, we can make about ten revolutions in a minute; we work the engine back by hand; three and a half revolutions back will not get the ship under sternway when going as she was at this time; I should think it would reduce her speed to about four knots. The light at masthead, I think, can be seen farther than red or green light at any time; this is because it is placed higher, and not because it is a white light. I should think a globe signal-lantern could be seen a quarter of a mile, more or less, although I do not pretend to be so much of a judge as the mate is. I heard no hail on the steamer before the bell rung. I did not see the captain; I was under cover, and could not see who was on deck. I should think the white light was about fifty feet from the water's edge. The other lights are on the top of the paddle-boxes, which are about twenty-nine feet above the water. The lights are so arranged that they all may be seen by vessels ahead, but cannot be seen by vessels on either quarter. I don't know that they would see either light; but on either beam they would see one. I can't tell how many points off from either bow all three lights could be seen.

WALTER SCOTT.

Sworn before me, this 9th day of May, 1855.

ELIAS L. SMITH,
Commissioner of Deeds.

Endorsed: U. S. district court for the southern district of New York—The steamship James Adger, her tackle, &c., adsm. William J. Todd & al.—Testimony of Walter Scott—George A. Halsey, claimant's proctor—Due service of a copy of within deposition hereby admitted—May 25th, 1855—Owen & Vose, libellant's proctor.

UNITED STATES DISTRICT COURT.

THE STEAMSHIP JAMES ADGER, her tackle, &c.,
against
WILLIAM J. TODD and als.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William Merritt, being duly sworn on the part of the defendants, says: I am a seaman, and belong to the ship James Adger, and expect

to leave here with her next Saturday; I was in her at the time of her contact with the Trader; I was in the forecastle on the look-out; it was the mate's watch; Taylor was with me on the look-out; Mr. Halsey and a man at the wheel were in the wheel-house; there was one man in that watch, and he was on the main deck. Taylor first saw the Trader; he sung out; I then heard the engine-bell ring and wheel ordered to starboard; this was immediately on the vessel being discovered. After the alarm by Taylor, I should think it was about a minute or a minute and a half before we came in contact; I saw no light on the Trader at the time of the alarm. I saw a light, a glimmering light, I suppose a globe lamp, just as we struck her; when I saw it, the light was forward carried by a somebody. The weather was very thick and hazy; you could hardly discern the lights in the paddle-box from the forecastle; signal lights in ships at sea are generally carried in the bowsprit head or foremast head. A vessel coming up in the wake of another could not see her signal-light if carried on her deck or at her bowsprit head; there was not time between the seeing of the sail and alarm by Taylor and the collision, to have avoided it, not knowing the direction of the schooner, the weather being very thick. The James Adger answered her helm very quick; quicker than any vessel of her size I ever saw. The steamer had three lights displayed; a white light at the foremast head, and a colored light on each paddle-box, on the extreme edge of the paddle-box.

Cross-examined.—I was on the starboard bow of the steamer, abaft Taylor; the other man on the look-out about ten feet abaft him, and about square with the foremast. Taylor saw her first, and sung out, Sail, ho! and then I heard the order to starboard the helm, and then I heard the bells ring; when Taylor reported the sail I saw her; when I first saw the sail she appeared to be close aboard of us; we could see her sails plain; saw her jib-boom; I saw her before the order was given to starboard the helm. She bore, at the time I first saw her, nearly ahead, perhaps half a point, on our starboard bow; I saw no light at that time. I did not change my position after the sail was reported, until the vessels came together; I did not see any light on the Trader until the vessels actually came together; the night was hazy, very thick; I don't think we could see a sail that night further than the length of the ship; could see a steamer light that night about a quarter of a mile; a good globe light, such as was on board the schooner, could have been seen a quarter of a mile if in the *the* masthead; if it was held by a person standing on deck, I don't think it could have been seen more than twice the length of the ship, the night being so thick.

WILL'M MERRITT.

Sworn before me, this 9th day of May, 1855.

ELIAS L. SMITH,
Commissioner of Deeds.

Endorsed: U. S. district court for the southern district of New York—The Steamship James Adger adsm. Wm. J. Todd and others—Testi-

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mony of William Merritt—George A. Halsey, claimants' *for* proctor—Due service of a copy of within deposition hereby admitted—Dated 25th May, 1855—Owen & Vose, libellants' proctors.

UNITED STATES DISTRICT COURT.

WILLIAM J. TODD and others
vs.
THE STEAMSHIP JAMES ADGER and owner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Nathaniel S. Badaun being duly sworn says: I am a seaman in the coasting line, and have been ever since I was fifteen years old, and in June next I will be fifty-seven years old; I have been to Chagres once; I went from New York to S'nt Mary's in a brig; I left the brig at S'nt Mary's; the lamp until the collision, I should say from five to eight minutes; I should say five minutes at the farthest; I heard the mate hollow to the man at the wheel to put her helm hard up; this *this* was just as I got off the steps; he had hardly got the word out of his mouth before she struck; the steamer backed right , but they were foul may be a minute, but I think not over half a minute; I should think the Adger, forward, was twelve feet from the water to the top of her bulwarks.

Cross-examined.—I have been master of a vessel; it was a sloop on the North river. I have never been master of a sea-going vessel. I was master of the sloop in 1836 and not since; I have been always coasting; I have been mate; I was mate of a vessel running up the sound; I shipped on board the brig Maria, of Boston, bound to St. Mary's, Florida; thence to St. Thomas; I left her at St. Mary; I was steward in her. I joined the Trader at St. Mary; I had no particular duty assigned to me; I never expected any wages; I believe the captain put down ten cents to answer forms of law; I was to receive nothing; I first went on deck about half-past eleven o'clock; it was then the mate's watch; I saw the mate; he stood in the cabin door when I went out and when I came in; I remained on deck there may be five minutes, and then went into the cabin and made a fire. The globe lanthorn was then standing on the table, but it was not lighted. After I had got the fire made the mate came down for something; I was sitting in the cabin; the mate was not there over a minute before the mate sung out "A light." The globe light was not then lighted; Roehn lighted it himself; he did not light it while down after his things. When the mate went on deck at the time the light was reported, I did not follow him, but I remained in the cabin until he came down to light the lamp; he came down; I saw him light the globe lamp; he lit it with a match which lay on the table; he then went on deck and I followed him; when I got on deck I saw the steamer; she was just about heading for us; she was heading about a southwest course. I saw then all three of her lights; she must have been more than a

half a mile off at that time, but I have said she was a half, and asked the captain of the Trader if I could come on with her to New York. I was entered on her papers; I signed the articles; I was on board at the time of the collision with the James Adger; about seven o'clock Saturday night, the thirty-first March, we made land; the captain and mate supposed it to be Egg Harbor.

The wind shifted to northeast, and we stood off, and were standing about south or southeast when the steamer struck us. I had no standing watch at all, but about half-past eleven I got up and went on deck; it was raining; Mr. Rohen said, If you go to turn in, I wish much that you would make a little fire first; I said, I will; I got the fire made; the mate came down into the cabin I think to put on something, and while he was there the man at the wheel sung out he saw a light ahead. The mate immediately went on deck, then came down again and took a lamp up, and I followed him; there we saw the lights of the steamship; she was standing for us just about head and head; it was raining so hard I went back into the cabin to get my coat; the captain asked me what was the matter; I said, Light ahead. He said, Is Mr. Rohen on deck; I said, Yes, he took a light up; then the captain and I went on deck together, and just as we got clear of the steps the collision was. When I first saw the steamer I thought she was half a mile, or further. When I first followed the mate up, and saw the steamer, I said she was backing; I said it to those by the men of the watch and the mate. When I first saw the Frenchman, Pensard, after I came on deck, he was just coming out of the forecastle; this was before the vessels struck, four or five minutes—may be three minutes. The steamer was backing when she struck us; she backed off and the mate hailed her, and asked what ship it was; then they asked us what schooner it was; he said, The Trader. He then asked us if we wanted any assistance; Rohen asked the captain, What shall I say; the capt. said, Tell him yes, and he did so; she then came under our stern; I think we were under sternway; it smashed our boat on the davits aft, and our main boom went through the steamers waist; I saw three lights on board the steamer when I first saw her, one on each side and one larger light forward. From the time the mate came down for a mile, and let it go, I think she was over a half mile off; I could not see her hull; I did not speak to the mate; I went forward and saw the look-out; he was just coming out of the forecastle. The mate went forward with me; he was just ahead of me; I don't know whether he saw the look-out or not; I turned back then, and went into the cabin to get my coat, when the captain spoke to me as before stated; I got my coat, and went immediately on deck, and before I got forward she struck us; I had gone about fifty feet. I saw the mate when I came out with my coat on; he was forward with the globe light displaying it. I thought he was; he was on deck. This was a very large globe light; it was a good light; it was cleaned by order of the captain that afternoon; it gave a good light.

On going on board the James Adger, we rowed around her bow, when I saw that she was cut from about six inches of the water's edge

up about six or eight feet on her stern; the stern was smashed in until it got to the plank, the wooden ends of the plank not touched; it appeared to have been a hard blow. I should think the steamer lay near half a mile off from the schooner when we got aboard of her. I noticed the globe light after I got aboard the steamer; I saw it on her trunk cabin; it was a kind of glimmering light, although we could see. It rained pretty hard at the time I came on deck with my coat; I saw the wheels of the steamer in motion; I don't know which way they were going, whether forward or back. When I first came on deck with my coat the steamer had already run her jibboom through our jib, and had slewed the schooner round. The schooner was close-hauled when the collision occurred, and the steamer had slewed her around all of four points before the hull struck. As soon as we got on board the steamer she started right away and run in towards the schooner as long as we could see it; we were soon out of sight of it; we might have been a quarter of a mile off when I last saw it. I came back in the James Adger; I did not do anything coming back, except I helped scrub the deck three or four times.

The captain of the James Adger gave me since I came back five dollars for labor in Charleston; I asked him to pay it; the captain did not say anything about the collision, nor tell me that I would be wanted as a witness.

Direct resumed.—When the boat took us to the steamer some of the men went right on board; I remained in the boat, and went with the crew to examine her bow; this occupied us some fifteen or twenty minutes, or more; we then came alongside, and were hoisted on board with the boat. From the time the man at the wheel cried out a light, until the mate lighted his lamp, may have been about a minute, not more; he was in a great hurry; he hardly stopped to ship the into the lanthorn; I followed him up, went forward, and came back for my coat; that took me not more than half a minute; then I got my coat and went on deck, and then I had not time to get forward before the steamer struck us.

N. S. BADEAU.

Sworn to before me, this 14th April, 1855.

GEORGE HARGAN,
Commissioner of Deeds.

Endorsed: U. S. district court—The Steamship James Adger ads. William J. Todd and others—Deposition of Nathaniel S. Bordeaux—Geo. A. Halsey, defendant's proctor—Due service of a copy of within hereby admitted—May 25, 1855—Owen & Vose.

[Rec. l, D. T., 1857.]—4

UNITED STATES DISTRICT COURT,
Southern District of New York.

WILLIAM J. TODD, THEODORE W. TODD, WILLIAM TIEBOUT, and others,
vs.
THE STEAMSHIP JAMES ADGER, SPOFFORD & TILESTON, claimants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas Donelly, of the city of New York, being duly sworn and examined de bene esse, does depose and say, that he expects to leave New York for Philadelphia in a few days. I was seaman on board the schooner Trader in her last voyage from Snt. Mary's to New York; on the morning of the first April inst., at about one o'clock in the morning, I was turned in, and was roused by the schooner striking against something; I got out of the forecastle and hurried on deck; I saw it was a steamship; she had struck the schooner forward her forechains, about two or three feet; it was thick weather when I turned in, raining very hard, thicker when the steamship struck than when I turned in at 12 o'clock; I was at the wheel in the previous watch from eight to ten, and I was on the look-out from ten to twelve; the schooner carried no lights that night; the steamer had her lights; the steamer backed off after the first collision, and then came up under her stern, or the schooner had sternway on, and she came up forward of the steamship's wheelhouse and smashed her bulwarks. In the course of ten minutes after the first collision the captain told us to leave the schooner, and the crew all went on board the steamer; the captain of the steamer asked us if we wanted any assistance; after the second collision a boat came from the steamer to the schooner and took us off. It had breezed up a little about 12 o'clock, and we had taken in the gaff-topsail; she was going, I think, about four knots an hour. I stood, when on the look-out, forward; I always kept a good look-out; I had been on the watcher a good while, and knew it was dangerous; I think you can hear a steamship at sea six or seven miles; that night I should think she might be heard five or six miles. The steamer had three lights, one on each wheelhouse, and one in her foretop masthead, I should say; when I first came on deck I saw several running round; I saw the capt. running forward. This collision took place, as far as I can say, off shore about thirty miles from Barnegat.

Cross-examined.—I was in the captain's watch; that watch turned in at 12 o'clock; the other watch was called a few minutes before twelve o'clock; before our watch was turned in, we took in the gaff-topsail; from 10 to 12 I was on the look-out and the captain's brother was at the wheel; I was on deck when the other watch came out; I did not hear any orders or directions from the captain given when he went below as to look-out; when I turned in you could see a vessel about three miles; it was not very thick then, not so thick as when the

collision occurred; I was awakened by the collision; I did not stop to put on my clothes, but run immediately on deck; I saw the two vessels together at the time; the steamer's cut-water was still in the schooner; she struck the schooner on the larboard side two or three feet forward of the forward part of the forechains; I should think the schooner was opened six or eight inches above the water edge up to the plank sheer, that is all I took notice to; the steamer then backed off about three or four vessels' lengths; the captain or some person on board the schooner sung out and asked if we were much hurt; the mate of the schooner then said hold on till we see; I afterwards saw the captain of the schooner going down forward into the forepart; I did not see any person with him; the captain went up and down into the forecastle several times, once or twice before the steamer returned; the steamer then came back under our stern and asked if we wanted any assistance; the mate sung out, Yes, that we wanted a boat since our boat was smashed; it was smashed by the second collision of the vessels; the steamer sent a boat to us; she lay off from us at that time; I should think about twice her length; when I first came out on deck at the time of the collision, I saw some one our crew, but which I can't say, have the globe lantern; it was lighted; I afterwards saw it stand on the top of the house on deck on the top of the cabin; I did not take notice of it, except it was burning; when I came out on deck you could not see a vessel more than three quarters of a mile; could see as much as that; could see the vessel's light, the steamship's light; I think we could see a vessel without lights a quarter of a mile; could not see the moon; I think the steamship was not more than twice her length from us when we got aboard of her; I did not observe whether the schooner had settled any before we left her; I think she had not; I did not save all of my clothes; I tried the pump and it sucked; she did not seem to have much water in her; this was when the steamship was coming up to us under our stern; this collision broke our main boom and smashed our boat; we did not take the lantern with us when we left; we left it burning on top of the cabin; I saw it burning after we got aboard of the steamer; the steamer got under way in about ten minutes; after we got under way I did not take any more notice about the lantern; we were all carried to Charleston and brought back to New York in the steamer.

Q. At whose request did you come here to-day to give your evidence?

A. At the request of Mr. Tileston.

Q. Have you been paid money by Mr. Tileston or any other person since you came back to New York?

A. Yes, I have received five dollars, and another man has received that sum; we received this from Mr. Tileston; we received this the next day after the ship arrived; we went to Mr. Tileston's office, and told him that we had lost our clothes; he said he pitied us poor, and he would let us have five dollars apiece. We talked about the collision at that time; we did not say much about it.

Direct resumed.—Altogether were three men in each watch in the schooner; the mate, Mr. Rohen and Jim O'Neil, a Frenchman named John, composed the mate's watch. It was Jim O'Neil's turn to be at the wheel at the time when this collision occurred. When I first came on deck he was aft, running forward; the Frenchman John was coming out of the forecastle, just ahead of me; I don't know where Mr. Rohen was when I came on deck; the first I saw of him he was forward; there was a pretty smooth sea at the time; no bad sea; it was some person on deck had the lantern when I first saw it.

THOMAS DONELLY.

Sworn to before me this 14th April, 1855.

GEORGE HARGAN,
Comm'r of Deeds.

Endorsed: U. S. district court—William J. Todd & others vs. The Steamship James Adger, &c.—Deposition of Thomas Donely—Due service of a copy of within hereby admitted—May 25, 1855.

OWEN & VOSE.

U. S. District Court.

Wm. J. Todd and others
vs.
The Steamship James Adger,
her tackle, &c.

Southern District of New York, *ss:*

James O'Neil being duly sworn says, he is a sailor by occupation and resides in New York. I was on board the schooner Trader at the time of the collision with the James Adger; it occurred about one o'clock, or a few minutes after, of the morning of the first April instant; I was at the wheel at the time of the accident. The schooner had no lights at the time we saw the steamship; then the mate fetched up a light; it was a globe light, I think, in the schooner when we left her. I first saw the steamship, or if any one else saw her first they did not speak. I don't know whether there was any one on the look-out on the schooner at the time there ought to have been; we were bearing about an east course, east by south, when I first saw the steamer. I saw her on our larboard side. When I first saw her I should judge she was about a half mile off, it might be more. I gave the alarm; the mate went down in the cabin after a globe lamp; I asked him as he went down if I should keep the schooner away; he said nothing then, but when he came up he told me to put the wheel up, and I had it up at that time. This threw the schooner more to the leeward a little. From the time I first saw the steamer until she struck, as it was from about five to eight minutes, we were going two or three knots an hour; as *to* the steamer was striking us, she began to back. I believe she made two or three revolutions back. I don't remember of hearing any bell rung on board of the steamer when the mate came on

deck with the light. It was about three minutes from the time the light was brought on deck that the vessels struck. The weather was rainy, a little thick, not very thick; when the steamer was so near that I could see which way the wheels were going, they were going back. The wind was northeast; the steamer had the wind; the steamer had her lights up.

Cross-examined.—I took the wheel at twelve o'clock. It was the mate's watch; John Pensard was on the look-out. I did not hear the man on the look-out report the steamer's lights before I saw them; I did not hear them report them; I reported them; I told the mate I thought there was a steamer coming.

The schooner was then heading a little south of east; we had four sails set; the wind I think was northeast; when I first saw the steamer's lights they bore about abeam of the schooner, on our larboard side; I first saw two lights; I saw the starboard light or the mast-head light; I think the steamer was then about half a mile off, may be a little more; the schooner was at the time close-hauled, sailing on her starboard tack; the mate was not gone hardly any length of time to get the lantern; the light stood on the cabin table; I don't know as it was the one he put in the lantern; he went forward with it, forward of the main rigging, and held it up on the larboard side; I should think the steamer was some nearer; I can't say how far off she was at that time; I had put the wheel before the mate ordered me, but the vessel had not fallen off much, not more than a point; I put up the wheel the schooner off so as not to have a collision; this had a tendency to avoid the collision; it did not increase the danger; I should think the schooner had fallen off *these* points before the steamer struck us; this is as near I should like to say; I remained at the wheel until the collision; the steamer struck the schooner forward of the forerigging, and cut her in a foot or eighteen inches into the deck, and down within six or eight inches of the water; the steamer then back off some two or three hundred yards; as she was backing off the mate of the schooner asked those on board the steamer what she was, but got no answer; she afterwards came towards us again, and came across our stern and came in contact with us again, breaking our main boom, and stove our boat; we only had one boat; I did not hear any one from the steamer ask how much we were hurt; after this she again backed off; I should think over a hundred yards; I heard the mate ask the steamer to stay by us; I know that the captain and mate went into the forecastle to see how much water; I don't know whether she was making water at that time. The steamer sent a boat to us and we all left and went on board the steamer; the globe lantern was left burning on the binnacle or cabin; I should say the steamer was about forty yards off when we got aboard of her; after I got aboard of the steamer, I saw the lantern; I could see the light distinctly; I did not look to see it afterwards.

I don't know how far a vessel without lights could be seen at the time of the collision; I should not like to say; I should think our light which was left might have been seen half a mile; I did not see any

moon; at the time I put the wheel up, the steamer was pretty close up on to us, perhaps a quarter of a mile, may be less; we were going somewhere about three knots, wind light; with this wind the schooner would not answer her helm very quick; the steamer had no sails set, but the wind was free for her; I got five dollars from Mr. Tileston since I came here, for my services on board the steamer coming on from Charleston; I received this Wednesday or Thursday of this week; I talked over the case of this collision a little at that time; I was not told that I was wanted as a witness.

When we returned to New York, I and the rest of the crew applied to the master and mate of the schooner for wages; I asked the mate and he told me I would get my wages; I might be certain of that; the captain told us that Mr. King, the agent of the schooner, was an honest man; I have not asked Mr. King for any money; I don't know as the others have. I am twenty-three years old.

Direct resumed.—I went with the steamer to Charleston and returned in her; I don't know where the Frenchman, Pensard, was when I first saw the lights of the steamer; the mate was in the cabin. The Trader was about two hundred tons; she had not quite a full deck load, but she had one full tier on deck of , and one tier which came about half-way, that is, it started about the cabin and came to about the middle of the front tier, or say a little forward of midships; we had the four lower sails set, no others; the Trader was about a foot out of the water at this time; I don't know the tonnage of the steamship; the bulwark or railing of the steamer was three and a half to four feet above her deck.

Cross-examined.—I don't think I will go to sea again right away if I can get work on shore; I mean to remain on shore; I did not do any duty on board of the James Adger from the time we were taken on board until she reached the wharf in Charleston, when I assisted in making her fast; there was no work for us to do; they did not ask us to do any thing; I joined the James Adger; I did not make any agreement; I worked at loading and unloading in Charleston, boarded on board of the steamship; I worked my passage home; I made no agreement with any officer on board the ship, or any one with regard to my board, but our mate told us that we could either work and board on the vessel or go on shore; I determined to work so as to get my passage back to New York; I went to *to* the ship after some little things I had there after I arrived here, and the first mate of the ship asked if we had got any money for working on board.

The next day we went for our things, and the mate asked if we had got any money; we told him no. He then told us to go to the office; that the old man Badau had been in the office and was there yet, and he supposed he was going to be paid for work on board the ship. I went and saw Mr. Tileston; they told him that the mate told us to come up there, that he was going to do something for us for working on board the ship. Mr. Tileston asked me where I lived; I told him. Some one came to my house this morning, and said I was wanted at

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Mr. Tileston's office, and I went there; Mr. Tileston told me he wanted to examine me as a witness. I then went to Mr. King's office, (the agent of the schooner;) Mr. King told me the mate of the schooner and another man had come around to Mr. Cutting's office, and so I came here. Mr. Tileston and the other gentlemen asked me if we carried any light in our rigging; I told him no; but when we saw the steamer we brought a light out of the cabin; Mr. Tileston said he supposed if we had had a light in our rigging it would have been seen. There was nothing else said except about the light in the rigging; nothing else was said; there was no complaint made against the schooner, except that she had no light in her rigging; I don't remember that I ever heard the captain or the mate, or any person belonging to the James Adger, or Mr. Tileston, say that it was so foggy that they could not see our lights; but when in Mr. Tileston's office, some person said that the officers of the James Adger had said it was so foggy that they could not see our light. Some of the crew of the James Adger, I don't recollect who, said that they saw our light when it was shown. They said nothing more about the light; our lantern was a globe light, such as I have seen on board of other vessels.

JAMES O'NEIL.

Sworn to before me, April 16, 1855.

JAMES HARGAN,
Commissioner of Deeds.

Endorsed: U. S. district court—William J. Todd and others vs. The Steamship James Adger & owners—Deposition of James O'Neil —Owen & Vose, libellant's proctor—Due service of a copy of the within hereby admitted—May 25, 1855—Owen & Vose—C. A. V.

At a special term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Thursday the twentieth day of December, in the year of our Lord one thousand eight hundred and fifty-five. Present, the Hon. Samuel R. Betts, dist. judge.

WILLIAM J. TODD and al.
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c.

This case having been heard on the pleadings and proof, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that the libellants recover in this action against the steamship Jas. Adger, her tackle, &c., the damages sustained by the collision in the pleadings mentioned, and that the said steamship, her tackle, &c., be condemned therefor; and that it be referred to a commission to ascertain and compute the said damages, and that on such reference evidence can be given to show whether the loss of the schooner Trader after the

collision might have been avoided by proper efforts on the part of her crew, or those in command of the said schooner; and that the commissioner report thereon to this court with all convenient speed.

(Sigd.) SAMUEL R. BETTS.

Endorsed: Vol. 12, No. 403—United States district court, for the southern district of New York—William J. Todd & al. vs. The Steamship James Adger, her tackle, &c.—Owen & Vose, Proctors for libellants—Interlocutory decree and order of reference—Filed 20th day of December, 1855.

UNITED STATES DISTRICT COURT.

WILLIAM J. TODD & al.
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c. } 12,403.

OWEN & VOSE,
GEO. A. HALSEY.

1855, Jan'y 5th.—The proctors for the respective parties being present, the reference is adjourned to 10th instant, at 11 a. m.

January 10th.—The proctors being present, reference adjourned to 24th, at 11 a. m.

January 24th.—The proctors being present, the reference is adjourned until February 5th, at 11 a. m.

Feb'y 5th.—The proctors being present, the reference is adjourned to the 9th February, at 11 a. m.

February 9th.—All present. Libellants put in evidence all the testimony and depositions used by libellants on the trial.

Henry H. King sworn: Reside in New York; business been mercantile; know the schooner Trader; purchased her October 6, 1853, for Todd & Company, and others, the libellants; Davenport, Allen & Company, of Richmond, Virginia, were the others. She was a very strong, well-built schooner, two hundred and one $\frac{75}{95}$ tons, Government measure; she was a full rigged fore-and-aft schooner; had a keel; no centre-board; she was built in Virginia, principally of Virginia oak; she was two years and four months old at time of collision; she was at that time in the best possible condition that I could put in; she had an entire new suit of sails, running rigging, a large new kedge anchor, considerable extra rigging on board of ready to be used, but not used; know the value of vessels of that class; I considered her value then, at the time she was lost, full eleven thousand dollars ($11,000); I had just expended eight hundred and fifty-four dollars for her sails, rigging, &c.; that is included in the estimate of eleven thousand dollars; there is not included in this estimate any allowance for wood or extra rigging, which I have understood were on board, nor clock or compasses, or property of captain or mate. She had on board at the time of collision a cargo on which she was earning freight, naval stores; she was under

charter to J. R. Gilmore & Company of this city; the freight under that charter would have amounted to thirteen hundred and sixty-four dollars and fifty-six cents.

Cross-examined.—Pine was used in building this schooner, besides oak; I know her age from her enrolment, which was dated November 29th, 1852; I was managing agent for this vessel in New York from the time of her purchase until she was lost; I never heard of any accident happening to this schooner till the collision; never heard of her having any collision with any other vessel, except that once one of the steamboats in the North river ran against her, and damaged her upper works some; don't remember the date, probably six months before her loss; had served captain; damage was unimportant, amounting to about fifty dollars; it was repaired fully; the steamboat paid for the repairs; she was not examined by port-wardens or surveyors after this collision; it was not necessary; she wanted caulking when I bought her; I had this thoroughly done; never heard of the leaking after collision in North river; never knew a vessel carry drier; I paid nine thousand five hundred dollars ($9,500 00) for her, first cost; then immediately had to expend on her five hundred dollars; she was badly furnished when I bought her; I consider that she was bought considerably under the market *[value at the time, and after that the market value of vessels rose; I consider her market value, a month after I bought her, to have been eleven thousand; I consider her] value at time I bought her to have been one thousand dollars more than I paid for her; I am not aware that the value of such vessels was any less in April, eighteen hundred and fifty-five, than in October, eighteen hundred and fifty-three; cannot call to mind any particular sales of vessels; she was about ten to eleven months old when I bought her; her former owner was Capt. Trader, of Virginia; he was master; I believe some other party was interested with him not in this city; saw her just before she went on her last voyage; Captain attended more particularly to repairs, &c., but I paid the bills. If a vessel was kept in good order, her sails and rigging, &c., I consider a vessel in such trade would depreciate five per cent. from one year old to two years and a half, it would depend on circumstances; up to five years a vessel depreciates very little in value year by year; after that age *the* depreciate rapidly; can't say whether she would depreciate less rapidly without pine in her; proper parts of the pine is as efficient and desirable as any wood; can't say where the pine was in this schooner, or what part was pine, or what of oak.

H. H. KING.

James Gilmore sworn. Of the firm of J. R. Gilmore and Company, of this city; knows the schooner Trader, chartered her as agent in her last voyage from Camp Pinckney, Georgia, to New York; cargo was spirits turpentine, turpentine and rosin; freight stipulated in charter-

*Obj. to.

party, nett amount; freight payable was on her arrival in New York, would have been thirteen hundred and sixty-four $\frac{56}{100}$ dollars, as near as we can calculate; it is necessary to estimate the weight of the rosin in making this calculation, based upon consignment of rosin made by the same parties. This estimate cannot vary fifty dollars from entire accuracy; that freight would have been paid by me had she arrived.

JAMES R. GILMORE.

Henry L. Slaight sworn. Ship-broker in New York; have been for six years; am acquainted with the value of vessels of that class; have seen the Trader; knew her tolerably well; have seen her several times; obtained freights for her; remember her after her purchase by Todd & Co.; did business for her. Her value depends upon her condition; if she had a new suit of sails, and was otherwise in good condition according to the market at that time, I should have considered her worth about eleven thousand dollars, not less; I refer to the spring of 1855; I don't know whether she had a new suit of sails or what her condition was in 1855.

Cross-examined.—I was on board of her repeatedly before Todd purchased her; can't say whether I have been since or not; depreciation of a vessel from one year to two and a half depends on circumstances; sometimes none at all; may be in better order; price may have gone up; I have not formed any judgment as to such rates of depreciation; pine is sometimes as good as any wood; depends upon what part of the vessel it goes into; pine timbers, oak planking, makes the most durable vessel; pine is very durable wood; I think there was no depreciation in the market value of this class of vessels from October, 1853, to April, 1855; I don't know what part of the vessel had pine and what part oak.

H. L. SLAIGHT.

Adjourned to Saturday, 16th, 11 a. m.

Endorsed: 11,403—U. S. District Court—William J. Todd & al. vs. The Steamship James Adger—Owen & Vose, for libellants—Geo. A. Halsey, for clmt.—Testimony on reference.

Commissioner's Report.

District Court of the United States for the southern district of New York.

WILLIAM J. TODD and others
vs.
THE STEAMSHIP JAMES ADGER, her tackle, &c.

In pursuance of a decretal order, made in the above entitled cause, on the twentieth day of December, in the year of our Lord one thousand eight hundred and fifty-five, by which among other things it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due to the libellant for the damages sustained by the collision in the pleadings mentioned; and also, whether the loss of the schooner Trader, after the collision, might have been avoided by proper efforts on the part of her crew or those in com-

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mand of the said schooner, and to report thereon to this court, with all convenient speed.

I, George F. Betts, the commissioner, to whom the matter was referred, do report, that I have been attended by the proctor for the libellants and for the claimants, and have taken and examined the testimony offered in support of the libellants' claim, none having *having* been offered in opposition thereto, and find that the loss of the schooner Trader after the collision could not have been avoided by any proper efforts on the part of her crew or those in command of her, and that there is due to the libellants for the damages sustained by the collision in the pleadings mentioned, the following amounts, viz:

Value of the vessel - - - - - - - -	$11,000 00
Interest to April 19, 1856, 1 year 18 days - - -	805 66
Freight as per charter-party - - - - -	1,364 56
Interest to April 19, 1856, 1 year - - - -	91 51
	$13,265 73

Amounting in the whole to the sum of thirteen thousand two hundred and sixty-five dollars and seventy-three cents.

Dated the 19th day of April, A. D. 1856.

GEO. F. BETTS,
U. S. Comm'r.
OWEN & VOSE,
Libellants' Proctor.

Endorsed: Vol. 12, No. 403—U. S. District Court, southern district of New York—William J. Todd and others vs. The Steamship James Adger, her tackle, &c.—Commissioner's report—Owen & Vose, proctors for libellants—Filed April 21, 1856.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

THE STEAMSHIP JAMES ADGER, &c., } ads. WILLIAM J. TODD and others. }

GENT: Please to take notice that the libellants hereby accept to the commissioner's report in above matter, bearing date the nineteenth instant, and especially that he has allowed libellants thereon the sum of one thousand three hundred and sixty-four dollars and fifty cents, the amount reported by him the Trader would have earned had she accomplished her voyage. Dated New York, April 23d, 1856.

Yours, &c.,
GEORGE A. HALSEY,
Proctor for Libellants.

To OWENS & VOSE, Esq're,
Proctor for Libell'ts.

Endorsed: 12,403—District court of the United States for the southern district of New York—The Steamship James Adger ads. William

J. Todd and al.—Exceptions to commissioner's report—Geo. A. Halsey, proctor for respon't—Filed April 24, 1856.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Saturday the 26th day of April, in the year of our Lord 1856. Present, the Hon. Nathan K. Hall, district judge.

WILLIAM J. TODD & al.
vs.
THE STEAMSHIP "JAMES ADGER," her tackle, &c.

This case having been heard on exceptions taken by the claimants to the commissioner's report, and signed by the advocates for the respective parties; on reading the report of George F. Betts, United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for damages sustained by collision in the pleadings mentioned, the sum of thirteen thousand two hundred and sixty-five $\frac{73}{100}$ dollars: On motion of Messrs. Owen and Vose, proctors for the libellants, it is ordered that the exceptions be overruled, and that the report be in all things confirmed, and that the libellants recover in this action against the Steamship James Adger the amount reported due, together with the costs to be taxed, and that the said Steamship, her tackle, &c., be condemned therefor.

And on like motion it is further ordered, that out of the proceeds of the stipulations of the claimants when paid into the registry of the court, the clerk of this court pay to the libellants or their proctors the amount reported due, together with their taxed costs.

And on like motion of Messrs. Owen and Vose, proctors for the libellants, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that on payment into the court of the amount of the stipulations for costs and value, that the clerk distribute the proceeds in satisfaction of this decree.

OWEN & VOSE,
Proctors for Libellants.

Endorsed: Vol. 12, No. 403—U. S. district court for the southern district of New York—Wm. J. Todd & al. vs. The Steamship James Adger, her tackle, &c.—Owen & Vose, proctors for libell'ts—Copy final decree in rem, on confirmation of comm'rs report.

OF THE UNITED STATES OF AMERICA,
For the Southen District of New York, in the second circuit.

THE STEAMSHIP JAMES ADGER, her tackle, &c., SPOFFORD & TILESTON, claimants and appellants,
vs.
WILLIAM J. TODD & others, libellants and appell*ants*.

Bond for Costs.

Know all men by these presents, That we, Paul Spofford and Paul N. Spofford, are held and firmly bound unto the above named libel-

lants and appellees in the sum of fourteen thousand five hundred dollars, to be paid to the said libellants; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the first day of May, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, the above named appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

PAUL SPOFFORD, [L. S.]
P. N. SPOFFORD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 1st day of May, 1856, before me,

GEO. W. MORTON,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Paul Spofford and *Paul N. Spofford* being duly sworn depose and say, and each for himself saith, that he is worth the sum of twenty-nine thousand dollars over and above all his just debts and liabilities.

PAUL SPOFFORD,
P. N. SPOFFORD.

Sworn to this first day of May, A. D. 1856, before me,
GEORGE W. MORTON,
U. S. Comm'r.

Filed 1st day of May, 1856.

District Court of the United States for the southern district of New York.

THE STEAMSHIP JAMES ADGER ads. WILLIAM J. TODD & others. } *Notice Appeal.*

GENT.: Please to take notice, that the claimants in above entitled action intend to appeal to the final decree entered in said action to the next circuit court of the United States in and for the southern district of New York. Dated New York, 28th April, 1856.

Yours, resp'ly,
GEO. A. HALSEY,
Proctor for Respondent.

To GEO. F. BETTS, Esqre.,
Clerk District Court.

Endorsed: 12,403—District court of the United States for the southern district of New York—The steamship James Adger ads. William J. Todd and others—Notice of appeal—Geo. A. Halsey, proct'r for respondents—To George F. Betts, esqre.—filed Ap'l 30, 1856.

Circuit Court of the United States for the southern district of New York.

THE STEAMSHIP ADGER, appellants, ads. WILLIAM J. TODD et al., respondents. } *Petition.*

To the honorable the Circuit Court of the United Sthates for the southern district of New York.

The appeal of Paul Spofford and Thomas Tileston, the claimants in above entitled cause and appellants therein, respectfully shows:

That on or about the 13th day of April, 1855, the above named respondents exhibited their libel in the district court of the United for the said southern district, against the said steamer, her tackle, apparel, and furniture, claiming over fifty dollars, praying among other things for the reasons set forth in said libel, that said steamer might be condemned to pay the demand of said respondents and costs of said libel. That process thereupon issued out of said court against said steamer, her tackle, apparel, and furniture; and these appellants, on or about the said 13th day of April, intervened and claimed same as owners thereof, and gave the necessary stipulation for value and costs, and said steamer was thereupon discharged from the custody of the marshal.

That these appellants, on or about the fifth day of May, in said year 1855, filed their answer to said libel in said district court, praying that said libel be dismissed with their costs in that behalf. And said respondents afterwards, and on or about the eighth day of May, filed their reply to said answer, as by reference to said libel will more fully appear.

That afterwards, and on or about the twenty-fourth and twenty-fifth days of October, in the said year one thousand eight hundred and fifty-five, said cause came on to be heard before the honorable Samuel R. Betts, judge of said district court, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge being advised thereon, did, on the day of December in said year, make a decree or sentence in said cause, whereby it was among other things sentenced and decreed, that the respondent in said cause recover against the said appellants therein, damages occasioned by the collision set forth in the pleadings, the amount of said damages to be ascertained by a reference for that purpose to the clerk of said district court, who afterwards reported that there was due to the said respondents, from said appellants by reason of said collision, the sum of thirteen thousand two hundred and sixty-five dollars and seventy-three cents and

That afterwards, and on or about the twenty-fourth day of April, one thousand eight hundred and fifty-six, exceptions to said report were duly filed in said district clerk's office, and same afterwards at a stated term of said court, held in the city of New York, on the twenty-sixth of said April, before the honorable Nathan K. Hall, district judge, pro forma overruled by consent, and said report was then and there confirmed by said court by the final decree thereof. And these appellants are advised and insist that said decree is erroneous, inasmuch as said collision was the fault of the said respondents, or was not that of the said appellants, and that these appellants, said steamer, were not liable for any damages therefor; and that if the same was the fault of these appellants' vessel mentioned in the pleadings, they nevertheless should not be required to pay the amount which said clerk reported in and by his said report said vessel would have earned for freight had she accomplished her voyage; and further, because the reasons assigned by said district judge for his decision are contrary to law.

And these appellants for these and other reasons appeal from the whole of said decree to the next circuit court, and on said appeal they intend to make new allegations in said circuit court, and introduce the same and new and further proof.

Wherefore, the appellants pray that the record and proceedings may be returned to the said circuit court, and that said decree may be reversed and such other decree made thereon as to the said court may seem just; and that the respondents may be condemned to pay to the appellants their costs and damages in the premises.

GEORGE A. HALSEY,
Proctor for Appellants.
EDGAR S. VAN WINKLE,
Of Counsel.

Endorsed: 12,403—United States circuit court *court* for the southern district of New York—Steamship James Adger ads. William J. Todd et al—Petition—George A. Halsey, appellants' proctor—Filed May 7, 1856.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on Wednesday the tenth day of September, in the year of our Lord one thousand eight hundred and fifty-six. Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE STEAMSHIP JAMES ADGER, her tackle, apparel, &c., Paul Spofford & Thomas Tileston, claimants & appellants, ads.
WILLIAM J. TODD & others, respondents & appellees.

This cause coming on to be heard:
Mr. Cutting reads from the apostles the evidence on part of libellant.

Mr. VanWinkle reads from the apostles the evidence on part respt's.
Mr. Cutting argues for the libellant and appellee; Mr. VanWinkle do. respt. & applt.; Mr. Cutting is heard in reply.
Cur. adv. vult.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on the 24th day of September, in the year of our Lord one thousand eight hundred and fifty-six. Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM J. TODD, THEODORE W. TODD, WILLIAM TIEBOUT, ISAAC DAVENPORT, JAMES ALLEN, and G. B. DAVENPORT, liblt. and appellees,
vs.
THE STEAMSHIP JAMES ADGER, her engines, tackle, &c., PAUL SPOFFORD & THOMAS TILESTON, claimants and appellants.

This cause coming on to be heard upon the appeal taken therein by the claimants from the final decree of the district court of the United States for the southern district of New York, dated the 26th of April, 1856, in favor of the libellants, for thirteen thousand two hundred and sixty-five dollars and seventy-three cents; after hearing the allegations and proofs of the respective parties, and after hearing E. S. Van Winkle, esq., of counsel for the appellants, and F. B. Cutting, esq., of counsel for the appellees, and mature deliberation having been thereupon had, it is ordered, adjudged, and decreed, that the said decree of the said district court be, and the same hereby is, in all things affirmed, with costs.

And it is therefore further ordered, adjudged, and decreed, that the libellants, who are the appellees in this court, do recover against the said steamship James Adger, her tackle, &c., and against her stipulators, the sum of thirteen thousand four hundred and fifty-one dollars and eighty-nine cents, being the amount ordered to be paid in and by the aforesaid decree of the district court for their damages and costs in the said action, with interest thereon from the date of the said decree, that is to say, from the 26th day of April, 1856, and also their costs upon this appeal taxed at one hundred and ten dollars and seventy-two cents, which said decree, interest and costs, amount, in the aggregate, to the sum of thirteen thousand nine hundred and forty-nine dollars and seventy-three cents ($13,949 $\frac{73}{100}$), and that the said libellants and appellees do have execution therefor according to law and the course and practice of this court.

And it is further ordered, that unless an appeal be taken to this decree within the time allowed by the rules and practice of this court, that the sureties upon the appeal herein do cause the condition of their stipulation to be fulfilled, and that, in default thereof, summary judg-

ment be entered herein against them for the amount last above mentioned, and that the libellants have execution against them therefor, according to law and the course and practice of this court.

CIRCUIT COURT OF THE UNITED STATES,
For the southern district of New York:

THE STEAMSHIP JAMES ADGER, her tackle, apparel, &c., Paul Spofford and Thomas Tileston, claimants & appellants, adsm.
WILLIAM J. TODD et al., respondents.

To the honorable, the Supreme Court of the United States:

The appeal of Paul Spofford and Thomas Tileston, the above named claimants and appellants, respectfully showeth:

That on the thirteenth day of April, 1855, the above named respondents filed their libel in the district court of the United States for the southern district of New York against the Steamship James Adger, her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by them to the Schooner Trader and her cargo, by collision with the said Steamship James Adger, on the high seas on a voyage from St. Mary's river, Georgia, to New York; and that the said Steamship James Adger was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and the said libellants replied thereto, and such proceedings were had in the said cause that on the twenty-sixth day of April, 1856, a final decree was made and pronounced therein, by the said district court, wherein it was in substance adjudged that the said libellants recover against the Steamship James Adger, her tackle, &c., the sum of thirteen thousand two hundred and sixty-five dollars and seventy-three cents, together with cost.

And that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court, that afterwards on the twenty-fourth day of September, 1856, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore, these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States